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BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK Chairman JIM IRVIN Commissioner WILLIAM A. MUNDELL Commissioner In the Matter of: CALUMET SLAG, INC. GARRETH N. PATTON JEFFREY G. CRAWFORD MATTHEW E. HUNZINGER Respondents.	**DOCKET NO. S-03361 A-00-0000** **APPLICATION FOR REHEARING OR REVIEW OF DECISION**

Pursuant to AAC R14-3-112.C.5. and 7., Respondent Garth N. Patton (Patton) moves for a rehearing or review of the decision rendered in this matter because the penalties were excessive, and the decision was not justified by the evidence and is contrary to law.

1. **The Penalties Are Excessive.**

Before Patton became involved with Joe Atkins and Joe Hurley, he and his family owned a slag pile. **p.310.** Evidence at the hearing showed that it was worth between $300,000 and 2.3 million dollars. **p.315-316.** Atkins then formed Calumet Slag, Inc. (CSI) and issued Patton $750,000 of 1,000,000 authorized shares of CSI stock in exchange for the slag pile. **p.313-314.** Patton then spent at least $350,000, to $400,000 of $450,000 raised from the sale of this stock, for the direct benefit of CSI. **p.339.**

Patton no longer owns the slag pile. He no longer has the CSI stock he received in exchange for the slag pile. He no longer has the money he received for the sales of the stock, most of which were made by salesmen not named as Respondents in this action.

On the other hand, Atkins and Hurley, who brought nothing to this deal, now run the company. The company owns the slag pile, and the company received the benefit of almost all the money raised primarily by Atkins, Hurley, Delmanowski, and others.

The ACC ordered Patton to repay all investors, even though Patton gave up the slag pile, and kept very little of the money raised. Not only is this unfair, it is at odds with the purposes of the Arizona Securities Act. A person aggrieved by an illegal sale of securities may bring an action "to recover the consideration paid for the securities and . . . On tender of the securities purchased". ARS § 44-2001.A. In other words, an investor can't get her money back, and keep the stock. However, this is precisely what happened in this case, which constitutes a double recovery.

The company, run by Atkins and Hurley, owns the slag pile. The Division's theory is that the slag pile is worthless, and therefore, the Securities Act has been violated. If that is the case, then the company should have no problem returning ownership of the slag pile to Patton. The Division cannot have it both ways.

2. The Decision Was Not Justified By The Evidence And Is Contrary To Law.

Patton testified that he only spoke to 30 of the 180 or so investors. **pp 325**. The Division's investigator did not rebut his testimony. **pp 285**. There was uncontroverted testimony that Atkins and Hurley sold stock to more than 150 investors. **pp 325**. Crawford and his father-in-law, Delmanowski, also unnamed, sold stock to more than 70 investors **pp 327** Hawash made sales to more than 12 investors **pp 327**.

The Securities Division's accountant, who apparently analyzed several bank accounts, testified that he could not rebut the evidence that Patton expended over $350,000 to $400,000 for the benefit of CSI. **pp 292-293**.

The Consent Order entered into by Atkins and Hurley, on behalf of CSI, stated that CSI "derived only a fractional benefit of the monies raised through the Representatives' sale of CALUMET stock." It also stated that CSI "received little, if any, of these funds." Both of these statements were untrue, and misled the Commission.

There was insufficient evidence to support the decision. The Division did not prove that Patton is liable to all investors or that he is liable to pay full restitution to all investors. The real perpetrators of the scheme continue to own the slag pile, enjoy the benefit of investor funds, and run the company. Patton, who was a victim of Atkins and Hurley, has been ordered to pick up the tab.

3. Conclusion.

Commissioners Spitzer and Mundell both expressed reservations about the penalty at the July 25, 2000 Opening Meeting. In fact, Commissioner Mundell dissented from the Order. It is appropriate to review the Order, given the excessive, inconsistent and unfair penalty, and the lack of evidence put in by the Division against Patton.

It is important that any Order be fair and consistent. Patton should only be ordered to pay restitution for the sales he actually made. The Division knows how much money these thirty people invested, and ought to provide that to the Commission. If, in fact, the Commission orders Patton to repay all investors, then the slag pile should be returned to Patton.

RESPECTFULLY SUBMITTED: August 3, 2001.

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